



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2010-0151; FRL- 9706-1]

**Approval and Promulgation of Air Quality Implementation Plans;
Virginia; The 2002 Base Year Inventory**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the fine particulate matter (PM_{2.5}) 2002 base year emissions inventory portion of the Virginia State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VDEQ), on April 4, 2008. The emissions inventory is part of the Virginia April 4, 2008 SIP revision that was submitted to meet nonattainment requirements related to Virginia's portion of the Washington DC-MD-VA nonattainment area (hereafter referred to as Virginia Area or Area) for the 1997 PM_{2.5} National Ambient Air Quality Standard (NAAQS) SIP. EPA is proposing to approve the 2002 base year PM_{2.5} emissions inventory in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2010-0151** by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. E-mail: mastro.donna@epa.gov

C. Mail: EPA-R03-OAR-2010-0151, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2010-0151**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special

characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814-2071, or by e-mail at khadr.asrah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

II. Summary of SIP Revision

III. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

IV. Proposed Action

V. Statutory and Executive Order Reviews

I. Background

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On July 18,

1997 (62 FR 38652), EPA established the 1997 PM_{2.5} NAAQS, including an annual standard of 15.0 µg/m³ based on a 3-year average of annual mean PM_{2.5} concentrations, and a 24-hour (or daily) standard of 65 µg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to PM_{2.5}.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. In 1999, EPA and state air-quality agencies initiated the monitoring process for the 1997 PM_{2.5} NAAQS and, by January 2001, established a complete set of air-quality monitors. On January 5, 2005, EPA promulgated initial air-quality designations for the 1997 PM_{2.5} NAAQS (70 FR 944), which became effective on April 5, 2005, based on air-quality monitoring data for calendar years 2001-03.

On April 14, 2005, EPA promulgated a supplemental rule amending the agency's initial designations (70 FR 19844), with the same effective date (April 5, 2005) as that which was promulgated at 70 FR 944. As a result of this supplemental rule, PM_{2.5} nonattainment designations are in effect for 39 areas, comprising 208 counties within 20 states (and the District of Columbia) nationwide, with a combined population of approximately 88 million. The Virginia Area which is the subject of this rulemaking was included in the list of areas not attaining the 1997 PM_{2.5} NAAQS. The Virginia Area consists of the following cities and counties in Virginia: Arlington County, Alexandria City, Fairfax County, Loudoun County and Prince William County.

On January 12, 2009 (74 FR 1146), EPA determined that Virginia had attained the 1997 PM_{2.5} NAAQS in the Virginia Area. That determination was based upon quality assured, quality controlled and certified ambient air monitoring data that showed the Area had monitored attainment of the 1997 PM_{2.5} NAAQS for the 2004-2006 monitoring period and that continued to show attainment of the 1997 PM_{2.5} NAAQS based on the 2005-2007 data. The January 12, 2009 determination suspended the requirements for Virginia to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIP revisions related to attainment of the standard for so long as the nonattainment area continues to meet the 1997 PM_{2.5} NAAQS. On January 23, 2012, VDEQ submitted a request for withdrawal of the Virginia 1997 PM_{2.5} SIP revisions including the withdrawal of the attainment plan, analysis of reasonably available control measures, attainment demonstration, contingency plans and mobile source budgets. To meet the requirements of CAA section 172(c)(3), Virginia did not request the withdrawal of the 2002 base year emission inventory portion of the 1997 PM_{2.5} SIP revisions. Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions.

II. Summary of SIP Revision

The 2002 base year emission inventory submitted by VDEQ on April 4, 2008 includes emissions estimates that cover the general source categories of point sources, non-road mobile sources, area sources, on-road mobile sources, and biogenic sources. The pollutants that comprise the inventory are nitrogen oxides (NO_x), volatile organic compounds (VOCs), PM_{2.5}, coarse particles (PM₁₀), ammonia (NH₃), and sulfur dioxide (SO₂). EPA has reviewed the results, procedures

and methodologies for the base year emissions inventory submitted by VDEQ. The year 2002 was selected by VDEQ as the base year for the emissions inventory per 40 CFR 51.1008(b). A discussion of the emissions inventory development as well as the emissions inventory can be found in Appendix B of the April 3, 2008 SIP submittal.

Table 1 provides a summary of the annual 2002 emissions of NO_x, VOCs, PM_{2.5}, PM₁₀, NH₃, and SO₂ which were included in the Virginia submittal.

Table 1: Emissions of Pollutants in Tons per Year (TPY)						
Pollutant	NO _x	VOCs	PM _{2.5}	PM ₁₀	NH ₃	SO ₂
Emissions (TPY)	75,909.63	92,724.76	8,277.43	29,997.85	2,370.78	49,974.50

The CAA section 172(c)(3) emissions inventory is developed by the incorporation of data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the Consolidated Emissions Reporting Rule (CERR) for all source categories (i.e., point, area, nonroad mobile and on-road mobile). The 2002 emissions inventory was based on data developed by VDEQ and the Metropolitan Washington Council of Government (MWCOC). The data were developed according to current EPA emissions inventory guidance “Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations,” August 2005. EPA preliminarily agrees that the process used to develop this emissions inventory is adequate to meet the requirements of CAA section 172(c)(3), the implementing regulations, and EPA guidance for emission inventories. More information regarding the review of the base year inventory can be found in the technical support document (TSD) titled “2002 SIP Base Year Inventory” that is located in

this docket.

III. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia’s legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia’s Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by Federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce Federally authorized environmental programs in a manner that is no less

stringent than their Federal counterparts. . . .” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

EPA is proposing to approve the 2002 base year emissions inventory portion of the SIP revision submitted by the Commonwealth of Virginia through VDEQ on April 4, 2008. We have made the determination that this action is consistent with section 110 of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to the PM_{2.5} 2002 base year emissions inventory portion of the Virginia SIP, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: July 18, 2012.

W. C. Early,
Acting Regional Administrator,
Region III.

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